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6                   UNITED STATES DISTRICT COURT  
7                   WESTERN DISTRICT OF WASHINGTON  
8                   AT TACOMA

9                   JEROME CEASER ALVERTO,

10                  Petitioner,

11                  v.

12                  MICHAEL OBENLAND, Monroe  
13                  Correctional Complex Superintendent,

14                  Respondent.

15                  CASE NO. 19-cv-5212-RJB

16                  ORDER ADOPTING REPORT AND  
17                  RECOMMENDATION

18                  THIS MATTER comes before the Court on the Report and Recommendation of U.S.  
19                  Magistrate Judge David W. Christel. Dkt. 42. The Court has considered the Report and  
20                  Recommendation, Petitioner's Objections to Report and Recommendation, and the remaining  
21                  file.

22                  The Report and Recommendation recommends dismissal of the Amended Petition with  
23                  prejudice as untimely pursuant to 28 U.S.C. § 2244(d). Dkt. 42. It recommends that the statute  
24                  of limitations not be equitably tolled for extraordinary circumstances or overcome based on the  
Petitioner's assertion of actual innocence. *Id.* The Report and Recommendation further  
recommends against holding an evidentiary hearing and denying of the certificate of  
appealability.

1       The Report and Recommendation (Dkt. 42) should be adopted. The Petitioner's  
2 objections do not provide sufficient grounds to reject the Report and Recommendation. The  
3 Petitioner asserts in his objections that on August 29, 2008, he filed a motion for an arrest of the  
4 judgment and for a new trial. Dkt. 46. He points to a docket entry entitled only "motion" and to  
5 a handwritten pleading which is unreadable except for the bright blue date stamp and areas  
6 where he has inked over the original. Dkt. 46. This handwritten pleading was allegedly filed  
7 while Petitioner was represented by counsel before his sentencing. *Id.* The Petitioner maintains  
8 that this motion is still pending, and so, the time bar on his Amended Petition and all his other  
9 post-conviction filings have not begun to run. *Id.*

10       Petitioner's objection is without merit. In the Petitioner's September 12, 2008 sentencing  
11 hearing, after discussing various matters and the sentencing, the trial judge asked Petitioner and  
12 Petitioner's lawyer if there was anything else that needed to be addressed. Dkt. 38-2 at 857.  
13 They replied there was not; they did not raise this motion for a new trial or move to arrest the  
14 judgment. *Id.* No new trial was held, the final judgment was entered, and the Petitioner filed  
15 multiple appeals. The Petitioner's lawyers did not raise the issue (that there was an undecided  
16 motion for arrest of the judgement and for a new trial still pending in the trial court) on direct  
17 appeal. As stated in Report and Recommendation, various Washington Court of Appeal's  
18 decisions were final decisions, including orders that his later filed personal restraint petitions,  
19 which, in part, moved for new trials, were not timely. Petitioner has failed to show that he has an  
20 undecided motion filed in the trial court that constitutes grounds to toll the statute of limitations.

21       In his objections, the Petitioner generally reasserts his prior arguments, which are  
22 addressed in the Report and Recommendation. This includes his argument that his motions for  
23 DNA testing tolled the statute of limitations and that he is in some other manner entitled to  
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1 equitable tolling. His continued assertions that he failed to file his Amended Petition sooner  
2 because he was concerned about police threats are belied by his extensive litigation during the  
3 time that he was allegedly worried about the threats. As stated in the Report and  
4 Recommendation, the Petitioner has failed to point to sufficient evidence of actual innocence and  
5 his objections merely repeat his prior claims.

6 The Report and Recommendation (Dkt. 42) should be adopted and the Amended Petition  
7 should be dismissed with prejudice. The Petitioner fails to show that there are extraordinary  
8 circumstances which would justify tolling the statute of limitations and or that he is actually  
9 innocent. No evidentiary hearing is necessary; a certificate of appealability should be denied.  
10 Any and all pending motions are denied as moot.

11 **IT IS ORDERED THAT:**

12 The Report and Recommendation (Dkt. 42) **IS ADOPTED**;

13 The Amended Petition **IS DISMISSED WITH PREJUDICE**;

14 Any and all pending motions **ARE DENIED AS MOOT**.

15 A certificate of appealability **IS DENIED**.

16 The Clerk is directed to send uncertified copies of this Order to Magistrate Judge David  
17 W. Christel, all counsel of record, and to any party appearing *pro se* at said party's last known  
18 address.

19 Dated this 27<sup>th</sup> day of August, 2020.

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22 ROBERT J. BRYAN  
United States District Judge  
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